

LAW MEMO

What defines a good board of directors?

For better and for worse, our arts organizations are governed by boards who are legally responsible for the operation of our nonprofit, tax-exempt corporations.

Effective boards share our vision and our headaches. They give their time, expertise, and financial support because they value our work and want to improve the quality of life in our community. Most importantly, they "own" the

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organization on behalf of those who are not seated at the board table.

But too often, the board-staff relationship sours, especially when the board is recruited by the artists who had the insight and

initiative to found the organization.

You can't really blame the artists: they are entrepreneurs, which can make accepting the ultimate authority of the board members infuriating.

When tensions mount, staff mismanagement or arrogance and board micro-management are usually blamed.

But the underlying problems are really fear, the erosion of trust, and the fundamentally flawed, yet widely accepted, approach to governance.

TRADITIONAL BOARD ROLES

Some of the traditional responsibilities of board members are to:

- Oversee the management of the organization;
- Set goals, establish policies, and develop long-range plans;
- Review program plans and approve

budgets;

- Monitor organizational effectiveness;
- Hire and evaluate the top administrator;
- Ensure the organization's financial stability;
- Give money, help get it, or both;
- Represent the organization to the public and the public to the organization;
- Assess board performance;
- Attend board meetings and the organization's events; and
- Serve on one or more committees.

GOVERN MORE, MANAGE LESS

Unfortunately, many well-meaning boards fail to fulfill these conventional roles which tend to focus on activities rather than on policy-making.

This issue of *Arts Law Memo* outlines an alternative governance model that is discussed in several new booklets by John Carver.

It also looks at what nonprofit boards may be able to learn from the corporate governance arena.

POLICY GOVERNANCE MODEL

In *Boards That Make a Difference*, published in 1990, John Carver takes a candid look at the ineffectiveness of nonprofit boards and introduces his innovative Policy Governance model of board leadership.

Carver's descriptions of the typical board are all too familiar:

- Boards stumble from rubber stamping to meddling and back again.
- The realities of group decision making forever destine boards to be incompetent groups of competent people.
- Board members do not spend their time exploring, debating, and defining vision and values. Instead, they expend energy on less important, even trivial, items.
- Committee reports are likely to be filled with staff material masquerading as board work.
- Boards are generally less incisive, goal directed, and farsighted than their

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VLAA helps artists and arts organizations solve their legal and accounting problems. We operate a referral service, offer mediation to help resolve arts-related disputes, and provide a wide variety of educational programs, including seminars, a speaker's bureau, a resource library, and publications.

This issue was written by Sue Greenberg, VLAA's executive director.

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average members.

Carver also debunks the common prescriptions for ailing boards.

The remedy, Carver asserts, is not more or less involvement. Nor is it closer oversight, simply rubber stamping the work of the staff, or limiting the board's role to developing long-range plans.

He also says those who believe that the true path to effective governance is better communication will be very disappointed.

While these problem-based solutions are sensible, Carver maintains they "sow the seed for the next difficulty, because the solution often outlives the problem that justified it."

Carver's approach is an innovative model in which boards focus on values and perspectives. In this model, boards concentrate on "ends, not means" by adopting policies about what staff members can't do, not about what they should do.

An example of this kind of policy would be a statement clarifying when debt can be incurred, rather than the more conventional approach of seeking the board's permission to secure a loan.

Policy-focused leadership, Carver maintains, allows boards to govern efficiently and address matters of enduring importance.

CARVERGUIDE BOOKLETS

Although *Boards That Make a Difference* was justly celebrated, seven years have passed since its publication and surprisingly few arts nonprofits have actually embraced Carver's model.

A new series of six affordable booklets, published by Jossey-Bass, should inspire your arts organization to take a serious look at a different way of conducting board business (whether or not you decide to adopt Carver's model).

1. GOVERNANCE PRINCIPLES

The longest booklet in the series, this 32-page publication outlines the concepts and principles of the Carver model.

It offers nine easy steps for implementing Policy Governance, explains how to defuse the renegade board member and how to create a single board voice.

Most importantly, it demonstrates how boards can define and delegate rather than react and ratify.

2. DEFINING BOARD ROLES

When board members focus on the big picture, they become successful strategic leaders who cherish diversity and strive for accountability.

This guide offers practical suggestions for defining board job performance.

3. FIDUCIARY RESPONSIBILITIES

Most boards control finances by approving the annual budget and by periodically comparing actual expenses and revenues to the budget.

Carver believes that a better approach to financial management is to create specific policies that safeguard the organization's fiscal health.

4. THE CHAIRPERSON'S ROLE

The fundamental role of the chair is to lead the organization by helping the board define its own job and evaluate its performance.

Practical tips offered in this guide cover how to determine the chair's role in decision making, share responsibility, and plan for succession.

5. BETTER BOARD MEETINGS

Crowded agendas! Scattered focus! Endless meetings! Help!

Board service should be rewarding, engaging, and whenever possible, fun. This booklet will help your board use its energy more efficiently and effectively.

6. CREATING YOUR MISSION

When was the last time you dusted off your organization's mission statement?

Carver thinks mission statements should articulate how the world will be different due to the organization's existence. He encourages boards to engage in meticulous mission-writing sessions that address ends, not activities.

This booklet includes examples of mission statements and a checklist to help you analyze your statement.

CARVER'S POLICY GOVERNANCE MODEL

Under Policy Governance, a board crafts its values into policies of four types: ends, executive limitations, board-executive linkages, and governance process. Except for what belongs in bylaws or enabling statutes, these categories of board policy contain everything the board has to say about values and perspectives and underlie all organizational decisions, activities, practices, budgets, and goals. Because values permeate and dominate all organizational life, redesigning policy in this way presents the most powerful lever for expressing board leadership.

ENDS: The board defines which human needs are to be met, for whom, and at what cost. Written with a long-term perspective, these mission-related policies embody the board's long-range vision.

EXECUTIVE LIMITATIONS: The board establishes the boundaries of acceptability within which staff methods and activities can responsibly be left to staff. These limiting policies apply to staff means rather than ends.

BOARD-STAFF LINKAGE: The board clarifies the manner in which it delegates authority to staff as well as how it evaluates staff performance on provisions of the ends and executive limitations policies.

GOVERNANCE PROCESS: The board determines its philosophy, its accountability, and specifies its own job. The effective design of its own board processes ensures that the board will fulfill its three primary responsibilities: maintaining links to ownership, establishing four categories of written policies, and assuring executive performance.

— John Carver, *CarverGuide Series on Effective Board Governance*

From the Corporate World Ten Principles to Govern By

How should board members behave? In the Summer 1995 issue of *Directors & Boards*, a magazine for corporate board leaders, Hoffer Kaback, president of Gloucester Capital Corp., a New York investment company and a director of two corporations, offered ten guiding principles.

Some are clearly irreconcilable with the others; Kaback says the "goal is to select appropriate variations of the right principles in particular circumstances so as to act effectively as a director, while simultaneously honoring punctiliously your fiduciary obligations."

Kaback's principles are modified here to better suit the operation of nonprofit arts boards.

1. The Davy Crockett Principle

"Be sure you're right and then go ahead." Davy Crockett behavior manifests itself by doing strenuous battle for positions, insisting that "no" votes be recorded in the minutes, and threatening resignation.

2. The Sam Rayburn Principle

"To get along, you have to go along." When followed literally, this principle creates passive boards. A semi-Rayburn approach would encourage board members to get to know one another, establish rapport, and learn how they think and act.

3. The Times Principle

"Never do or say anything you wouldn't want printed on the front page of the *New York Times* (or your hometown paper)." This is usually the wise course, but having a crisis management plan in place is even wiser.

4. The Vice Chancellor Principle

"Avoid doing or approving anything that could even remotely result in your being sued in your capacity as a board member."

Given the awesome responsibilities of board service, it is not surprising that current and potential board members are sensitive to the threat of personal liability.

Directors who understand their responsibilities and use common sense have little to worry about...except, of course, the monumental task of helping their arts organizations survive and prosper.

7. The Sporkin Principle

Named for a former Securities and Exchange Commission director of enforcement, this principle cautions against passivity and encourages directors to stand by their beliefs.

6. The Always Trust Management Principle

"One need not be antagonistic in order to challenge management's assumptions, business reasoning, or any other aspect of management's performance. The unwillingness to challenge, when challenge there should be, means you have failed as a director."

7. The Never Trust Management Principle

"The flip side of Principle 6. This is too extreme and grossly unfair to staff members who are diligent, honest, forthright, and capable."

8. The Healthy Skepticism Principle

"Healthy skepticism is appropriate. Active adoption of this principle alone probably would result in substantial, positive change in American board rooms."

9. The 100 Shareholder Principle

In the nonprofit world, this principle requires board members to approve or disapprove of an action or expenditure as if they were spending their own money or running their own business.

10. The Lasker Principle

"Former world chess champion Emanuel Lasker believed in playing not the objectively best move inherent to the chess position but, rather, the best practical move tailored to the idiosyncratic style of the specific opponent."

This principle suggests that the board member's response to a given situation should suit its specific circumstances.

Nose In, Fingers Out

What can nonprofits learn from the corporate world where boards have been criticized for cronyism and indifference?

In November, the National Association of Corporate Directors (NACD) issued new standards for board professionalism.

The organization's goal was to encourage boards to be fully informed and more involved without micro-managing their company's affairs—what John N. Nash, president of the NACD calls the "nose in, fingers out" method of governance.

Some of the recommendations made by the NACD do not apply to nonprofits because they do not have shareholders.

But the following guidelines make a lot of sense. According to NACD, boards of directors should:

- Become active participants and decision makers in the boardroom, not merely passive advisers.

- Limit the number of board seats that can be held by any individual, in order to ensure that directors have the time necessary to fulfill their responsibilities.

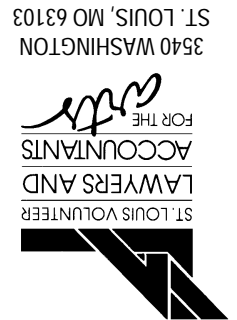
- Consider limits on length of service in order to obtain fresh ideas and critical thinking from new board members.

- Know how to read and understand financial reports.

- Institute a formal evaluation process for CEOs, individual directors, and entire boards against predetermined goals and objectives.



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Resources

BOOKS

Carver, John. *Boards That Make a Difference* (1990) \$27.95
Carver, John and Miriam Mayhew Carver. *Basic Principles of Policy Governance* (1996) \$10.95
Carver, John and Miriam Mayhew Carver. *Your Roles and Responsibilities as a Board Member* (1996) \$10.95
Carver, John. *Three Steps to Fiduciary Responsibility* (1996) \$10.95
Carver, John. *The Chairperson's Role as Servant-Leader to the Board* (1997) \$10.95
Carver, John. *Planning Better Board Meetings* (1997) \$10.95
Carver, John. *Creating a Mission That Makes a Difference* (1997) \$10.95
To order these titles directly from the publisher, Jossey-Bass, call 800/956-7739, ext. 520

McDaniel, Nello and George Thorn. *Arts Boards: Creating a New Community Equation* (1994) The authors present a new model, based on the artistic process, that shifts traditional board functions to task forces, individuals, and committees. For some arts organizations, this model may be a more effective organizational structure.

VIDEO

John Carver on Board Governance. This two-hour video features Carver presenting his innovative model of board governance. If you'd like to borrow the VLAA copy, call 314/652-2410.

These publications (and many other books on arts law and business practices) are available at the St. Louis Volunteer Lawyers and Accountants for the Arts library located within the Regional Arts Commission office, 3540 Washington, in Grand Center. The expansion of VLAA's library and promotion of its use is made possible by a generous grant from the Gateway Foundation.